



**Maryland Department of Agriculture
Maryland Department of the Environment**

SENATE BILL 1029

**MARYLAND DEPARTMENT OF AGRICULTURE AND
MARYLAND DEPARTMENT OF THE ENVIRONMENT
RESPONSES TO HATCHER GROUP
“FREQUENTLY ASKED QUESTIONS”**

Q. Won't this program result in less pollution to the Bay, by encouraging farmers to voluntarily reduce pollution?

- One of the primary goals of the Certainty program is to accelerate implementation of agricultural practices to restore the health of the Chesapeake Bay.
- Farms will only qualify for certainty if doing their part to meet TMDL requirements and addressing ALL soil conservation and water quality issues on their farm.
- Certainty will fast track progress for the agricultural sector and Maryland as a whole toward meeting our commitments to EPA under the WIP.
- Cross compliance with MDE-administered programs, annual reporting requirements for farmers, and ongoing inspections by trained and certified verifiers will enhance accountability for agricultural sector progress and increase “reasonable assurance” to EPA as required in the Watershed Implementation Plan (WIP).

Q. Aren't the requirements for participating farm operations very stringent, including additional inspections and reporting?

- Farms certified under Certainty must address ALL soil conservation and water quality issues on their farm and make proportional nutrient and sediment reductions necessary to meet agricultural goals in any local TMDL as well as the Chesapeake Bay TMDL WIP.
- Certainty farms also must meet ALL federal, state and local water quality requirements applicable to the farm at the time of certification.
- There are time-proven technologies implemented through local soil conservation districts who have over 65 years of experience applying USDA-NRCS standards and specifications for best management practices to protect soil and water resources.
- SB 1029 expressly maintains the State's authority to apply or enforce authorities for environmental protection, which would include inspections and necessary actions to respond to alleged pollution. (§8-1009(B)).
- MDA has been meeting with a stakeholder group to explore Certainty since the fall of 2011, and even longer with USDA. In 2010, MDA prepared a grant proposal to USDA, NRCS under their Conservation Innovations Grant program to explore the concept of Certainty. This project was to be a pilot focusing on two counties. The concepts proposed in the grant were put forward as a draft for evaluation, and preceded the more recent stakeholder discussions and the details developed during the process to draft legislation.
- With respect to privacy of information, farm-specific information has economic value in a highly competitive environment. Certainty is focused on farms that go beyond existing water quality requirements to accelerate progress toward environmental goals. It has a level of agency oversight consistent with other state environmental regulatory programs.

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In order to attract participation and serve as a viable mechanism for accelerating implementation of water quality BMPs, the program needs to protect farm information that has the potential to impact the economics of the farm business and assure it doesn't have features that deter enrollment.

Q. What exactly would participating agricultural operations be “exempt” from?

- A farm certified under the Certainty Program would be excused from meeting NEW state and local laws, regulations or other requirements related to nutrients and sediments from agricultural sources adopted during the 10-year period after the farm was certified.
- ALL federal requirements, including permits for large animal operations (CAFO) apply and any changes to federal permits would apply to a farm certified under Certainty even during the “Certainty” period.
- To be certified, a farm must remain in compliance with ALL State and federal requirements that are in effect at the time of certification.
- The bill does not exempt existing State enforcement authority.
- By the end of the 10-year Certainty period, farms certified under Certainty would be required to have implemented any new requirements adopted during the period of Certainty.

Q. Don't other Bay watershed states have similar programs?

- Yes. Virginia passed legislation in 2011 to implement a similar program. Regulations have been promulgated, published for public comment and scheduled for adoption this month.
- Delaware has drafted legislation proposed to be introduced in the current session this spring.

Q. MDA has said they expect only 25-35 farms to participate. Doesn't that minimize the potential for harm?

- The potential for more BMP implementation sooner than would otherwise occur and heightened reporting and inspection for enhanced accountability is a benefit, not a detriment to State water quality efforts.
- Approximately 5,500 farms are regulated under the nutrient management program and all but those with CAFO permits (500) could potentially be certified.
- Addressing ALL water quality issues on ALL farms would be a tremendous positive outcome and potentially could exceed TMDL agricultural reductions.

Q. The bill requires participating farms to “catch up” with all regulations they missed out on at the end of the 10 year exemption period. So why is there a problem?

- MDA asserts that only those high performing farms will step up early and should enjoy a realistic benefit from being early adopters meeting TMDL commitments
- The 10-year term is an appropriate time frame given the capital investments required to address all water quality issues on the, including meeting a baseline for TMDLs.

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- Shorter periods of Certainty provide no incentive for participation and the levels of implementation and reporting which occurs through certification.

Q. How would this program affect the Chesapeake Bay TMDL blueprint to restore the Bay and local waters?

- Certainty provides an incentive to meet TMDL goals with greater accountability on a faster track.
- The sector allocations for nutrient and sediment goals are included in the EPA-approved WIP for Maryland and Certainty does not affect the distribution of these restoration goals.
- The TMDL and related WIP require that 60% of the practices necessary to achieve water quality standards be installed by 2017. The 2017 evaluation will be based on BMPs installed - not water quality monitoring data. The Certainty program has the potential to achieve the agricultural goal more quickly.
- The WIP is divided into two year segments called Milestones which are tracked and evaluated by EPA on an ongoing basis to assure out year goals are achieved. Agriculture has exceeded its milestone goals in each of the last four years.

Q. How would this program affect local governments?

- The sector allocations for nutrient and sediment goals are included in the EPA-approved WIP for Maryland. Certainty will not affect the distribution of these nutrient reduction goals.
- By definition, the Certainty program is not “allowing agriculture to do less”. Conversely, Certainty requires participating farmers to do their part to meet the agricultural sector’s portion of this goal and the requirement to address ALL on farm resource issues could surpass TMDL requirements.

Q. How would this program treat agricultural operations differently from similar industries that abide by clean water act permits? How does the 10 year exemption time frame compare to other similar industry permits?

- Clean Water Act permits are administered in Maryland by MDE under a delegated authority from EPA and are unaffected by this legislation. CWA discharge permits require industries or municipalities to follow certain standards. These permits do not prohibit all discharges.
- Certainty requires compliance with all federal requirements, current state and local water quality requirements, AND requires that all soil conservation and water quality issues be addressed on the farm prior to being certified under the program.

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Q. What kind of information is made publicly available about whether agricultural operations are in compliance with federal and state laws to protect water quality?

- Annual reports will be produced including collated data reporting BMP implementation, number and acres of operations that are certified and information on inspection outcomes. Information identifying individual operations and farmers will not be publicly available.
- Information about farms operating under federal permits or existing State water quality discharge permits is publicly available and nothing in this bill modifies those provisions.
- The Maryland Legislature determined in 1998 that identifying information related to farms under a nutrient management plan should be confidential and nothing in this bill modifies those provisions.
- The legislation recognizes the sensitivity of this issue and §8-1010(A) provides for “...the greatest public disclosure of records and information while protecting the identity of the person for whom the records or information relates”.

Q. How would we know that participating agricultural operations are doing what they say they will?

- Farms are certified into the program by qualified, trained individuals.
- Farms are inspected at least once every three years to ensure requirements continue to be met. (§8-1008(A)(1)).
- The Department will annually publish a report outlining participation in the program including itemized listing of BMPs implemented and maintained as part of the Certainty program.

Q. Only farms that achieve certain levels of pollution control may participate. Who determines if a farm meets this level and how?

- Certification of a farm meeting Certainty requirements occurs only after an inspection by a verifier certified by the Department in accordance with regulations approved by MDA and MDE. (§8-1004(C)(1) and §8-1012).
- Inspections are required by the Department (§8-1008(A)(1)(I) and compliance with laws, regulations, permits or other requirements is assured by MDE (§8-1008(A)(1)(II)).
- Compliance inspections are conducted by a third party verifier determined by the Department. (§8-1008(A)(2)).
- The details of the procedural and technical processes that will be integral to the operation of the program will be more appropriately developed through regulation guided by the Stakeholder Committee. (§8-1013(B)(1)).

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Q. Weren't a number of environmental and agricultural stakeholders working together on this issue very recently?

- Since the fall of 2011, MDA has led both Chesapeake Bay watershed-wide discussions with stakeholders on Certainty, as well as Maryland-specific dialogue with all stakeholders.
- After 18 months of deliberation, key structural issues necessary for a meaningful Certainty program became apparent.
- With the support of broad-minded environmental organizations, the agricultural community, the Maryland Department of the Environment, and the Governor, the Department was encouraged by the potential for legislation this session.

Q. How much taxpayer money goes to pay for farmers to reduce pollution?

- The O'Malley Administration continues to invest in water quality programs reducing nutrient and sediment loads from Maryland farms- and farmers continue to set records implementing effective BMPs.
- The agricultural practices continue to be documented as the most cost effective solutions to Chesapeake Bay restoration efforts.
- Programs, such as Certainty, which accelerate the implementation of agricultural practices, should be supported by all individuals and organizations advocating for clean water.